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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/720,273	12/21/2000	Thomas Eckel	MO-6034/LEA3	9983

157 7590 08/30/2002

BAYER CORPORATION
PATENT DEPARTMENT
100 BAYER ROAD
PITTSBURGH, PA 15205

EXAMINER

SZEKELY, PETER A

ART UNIT	PAPER NUMBER
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1714

DATE MAILED: 08/30/2002

7

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

09/720,273

Applicant(s)

ECKEL ET AL.

Examiner

Peter Szekely

Art Unit

1714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 July 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 9, 10, 12-15 and 19-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 9, 10, 12-15 and 19-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1, 5, 13 and 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Claim 1 contains improper Markush language in parts (C) and (D) using "and" and "and/or". Claim 5 contains improper Markush language in parts (B 1.1) and (B1.2) and "derivatives of unsaturated carboxylic acids" is indefinite. CO₂ is a derivative of unsaturated carboxylic acids. It is derived by burning. Claim 13 contains improper Markush language. The phrase "other additives" in claim 15 is definitely indefinite, since one of ordinary skill in the art would not know the metes and bounds of the claim.

Claim Rejections - 35 USC § 103

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
5. Claims 1-5, 9, 10, 12-15 and 19-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mitsubishi Chemical Corporation EP 0 728 811, in view of Witmann et al. 4,937,285, Eckel et al. 5,126,404 or Witmann et al. 5,552,465.
6. All the references have been discussed already. It would have been obvious to one having ordinary skill in the art, at the time the invention was made, to use the ABS resin prepared by the process of the secondary references, in the composition of

Mitsubishi, in order to take advantage of the improved light stability and toughness and thermoplastic-elastic properties. See Witmann et al. ('465), column 4, lines 36-39 and Witmann et al. ('285), column 4, lines 1-15.

Response to Arguments

7. Applicant's arguments filed 7/8/02 have been fully considered but they are not persuasive. Mitsubishi does not teach away from using phosphorus compounds which are not phosphazanes. The reference simply teaches that phosphazanes are superior to other phosphorus containing compounds. As a matter of fact adding other flame retardants and stabilizers is clearly included in the teaching of this reference. See page 5, lines 17-19. But this is beside the point. The claims are rejected because one of ordinary skill in the art would use the graft copolymers of the secondary references in the composition of the primary reference, in order to take advantage of their superior properties, as expounded by the Witmann et al. patents. The rejection is maintained.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter Szekely whose telephone number is 703-308-2460. The examiner can normally be reached on Tuesday-Friday 7:00 a.m.-5:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on 703-306-2777. The fax phone numbers for the organization where this application or proceeding is assigned are 703-873-9311 for regular communications and 703-872-9310 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

A handwritten signature in black ink, appearing to read 'Peter Szekely', with a stylized flourish at the end.

Peter Szekely
Primary Examiner
Art Unit 1714

P.S.
August 28, 2002